



# U.S. DEPARTMENT OF STATE

## DIPLOMACY IN ACTION

### Executive Summary

Vietnam has successfully attracted large volumes of foreign direct investment (FDI), sustaining levels of around \$10-12 billion per year over the last six years. Investors commonly cite Vietnam's geographical position near global supply chains, the growing consumer market, expected improvements in the business climate upon completion of the Trans-Pacific Partnership, relative political and economic stability and an increasing desire to diversify their manufacturing base in Asia away from China as reasons they opted to invest in operations in Vietnam. Japanese and Korean firms in particular appear eager to increase manufacturing investment. Generally, the political situation has been very stable, and the government reacted quickly to quell May 13-14, 2014 anti-China disturbances.

While many international investors have found Vietnam an attractive destination, there are still areas in need of improvement. Problems include corruption and a weak legal infrastructure, inadequate training and education systems combined with restrictive labor policies, conflicting and detrimental bureaucratic decision-making, favoritism towards local firms, land use limitations, and questions over future access to reliable and affordable energy. Investors have called for immediate reforms and the development of sound economic policies in order for Vietnam to continue to attract high-quality, foreign investment.

### 1. Openness To, and Restrictions Upon, Foreign Investment

Vietnam officially encourages foreign investment as part of its development strategy and the government has stated its commitment to improving the business and investment climate to move Vietnam closer to the ASEAN average by 2015. Foreign invested companies play an increasingly important role in the economy. FDI sector exports reached 67 percent of the country's total exports in 2013, up from 47 percent in 2000, and foreign invested enterprises' share of the GDP increased to 18 percent from 13 percent over the same period. Vietnam has been very successful in attracting foreign direct investment, sustaining FDI levels around \$10-12 billion per year over the last five years. The FDI sector accounted for 23 percent of the country's investment capital in 2013.

Vietnam's attractiveness to foreign investors resulted in large part from the country's government policies encouraging FDI, as well as from its geographical position near global supply chains, political and economic stability, and abundant labor resources. Still, Vietnam is a developing economy and investors have identified many areas as in need of improvement. Problems include corruption and a weak legal infrastructure, financial instability, inadequate training and education systems, and conflicting and detrimental bureaucratic decision-making. Although public protests that turned violent and damaged factories in several provinces on May 13-14, 2014 were quickly addressed, foreign investors have asked for adequate compensation. Investors have called for immediate reforms and the development of sound economic policies in order for Vietnam to continue to attract high-quality foreign investment.

There is no policy discriminating against foreign investors. Although foreign investors are subject to different business licensing processes and restrictions, these processes are in some cases favorable to larger-scale foreign investors. As a further complication, Vietnamese authorities have different definitions of a foreign invested enterprise. In practice the level of foreign investment that qualifies an entity as foreign differs from province to province.

As a member of the World Trade Organization since 2007, Vietnam has established minimum commitments on market access for U.S. goods and services as well as treatment for Vietnamese and foreign companies. Vietnam undertook commitments on goods (tariffs, quotas, and ceilings on agricultural subsidies) and services (provisions of access to foreign service providers and related conditions). It has also committed to implement agreements on intellectual property (TRIPS), investment measures (TRIMS), customs valuation, technical barriers to trade, sanitary and phytosanitary measures, import licensing provisions, anti-dumping and countervailing measures, and rules of origin. Vietnam has made progress in implementing its bilateral and international obligations; however, concerns remain in many areas including protection of intellectual property rights (IPR) and effectiveness of the legal system. The first review of the trade policies and practices of Viet Nam took place September 17, 2013: [http://www.wto.org/english/tratop\\_e/tpr\\_e/tp387\\_e.htm](http://www.wto.org/english/tratop_e/tpr_e/tp387_e.htm).

The government of Vietnam holds regular business forum meetings with the private sector to discuss issues of importance. One such forum, the Vietnam Business Forum, published an annual report in 2012.

<http://www.vbf.org.vn/news-events/vbf-news/2012-vbf-news/item/206-annual-vietnam-business-forum-report-2012.html>

UNCTAD's Investment Policy Review was done in 2008.

[http://unctad.org/en/Docs/iteipc200710\\_en.pdf](http://unctad.org/en/Docs/iteipc200710_en.pdf)

OECD's Investment Policy Review was published in 2010.

<http://www.oecd.org/countries/vietnam/vietnam-investmentpolicyreview-oecd.htm>

The 2005 Investment Law, together with its implementing decrees and circulars, regulates investment, including investors' rights and obligations, investment incentives, state administration of investment activities, and offshore investment. The Investment Law also provides for guarantees against nationalization or confiscation and applies to both foreign and domestic investors. The Investment Law designates prohibited and restricted sectors. Additional laws apply conditions in sectors such as mining, post and telecommunications, property trading, banking, securities, and insurance.

The Investment Law provides for five main forms of investment: (1) 100 percent foreign-owned or domestic-owned companies; (2) joint ventures (JV) between domestic and foreign investors; (3) business contracts such as business cooperation contracts (BCC), build-and-operate agreements (BOT and BTO), and build and transfer contracts (BT); (4) capital contribution for management of a company; and (5) mergers and acquisitions (M&A). Foreign investors can, with restrictions, invest indirectly by buying securities or investing through financial intermediaries.

Authorities in Vietnam's 63 provinces generally have the authority to issue investment licenses, and are not always consistent in their application of licensing regulations. Likewise, provincial authorities and the management boards of industrial zones are the issuing entities for most types of investment licensing, with the exception of build-and-operate projects (BOT, BO, BTO), which are still licensed by the central government.

Most FDI projects must conform with one or more Master Plans, economic development policies that normally sets targets for an industry for a period of five or ten years. Nearly every industry has its own Master Plan. The requirement for projects to conform to relevant Master Plans is potentially problematic for foreign investors as the grounds for assessing compliance with a particular Plan are unclear. The Master Plans may overlap as they are issued both by ministries at the national level and provinces. FDI projects which are not specified in the Master Plans are subject to another separate process to bring them into conformity with the Master Plans before going through normal approval process. This conformity process is not clearly governed by regulations.

The 2005 Investment Law distinguishes four types of sectors: (1) prohibited sectors; (2) encouraged sectors; (3) conditional sectors applicable to both foreign and domestic investors; and (4) conditional sectors applicable only to foreign investors. The list of sectors in which foreign investment is prohibited includes investment seen as "detrimental to national defense, security and public interest, health, or historical and cultural values." The list of sectors in which investment is encouraged includes high-technology, agriculture, labor-intensive industries (employing 5,000 or more employees), infrastructure development, and projects located in remote and mountainous areas.

The list of sectors in which investment is conditional includes: those having an impact on national defense, security, social order and safety; culture, information, press and publishing; finance and banking; public health; entertainment services; real estate; survey, prospecting, exploration and exploitation of natural resources; ecology and the environment; and education and training. In addition to the above conditional sectors, FDI may be conditional when Vietnam has not made specific commitments on trade in services with WTO.

The sectors where certain conditions are applicable to foreign investors include ports and airports, telecommunications, postal networks, and other sectors as per Vietnam's trade commitments. A foreign-owned bank can be licensed to operate in Vietnam but will have to apply for additional licenses for their specific banking services.

Foreign investors have the right to sell, market, and distribute what they manufacture locally, and to import goods needed for their investment projects and inputs directly related to their production, provided this right is included in their investment license.

Foreign participation in distribution services, including commission agents, wholesale and retail services, and franchising, opened to fully foreign-owned businesses in 2009. Vietnam has excluded certain products from its WTO distribution services commitments, including rice, sugar, tobacco, crude and processed oil, pharmaceuticals, explosives, news and magazines,

precious metals, and gemstones. Retail outlet investment is subject to an economic needs test, which as interpreted limits new outlets of foreign retailers to areas where the retailer can prove they are fulfilling an identifiable consumer need.

Vietnam has gradually opened some sectors for foreign investment through mergers and acquisitions (M&A) as well as joint ventures (JVs). The ratio of total foreign ownership permitted in a project depends on a number of factors, including Vietnam's international commitments, the economic sector in question and the type of investor, among others. There are strict foreign ownership limitations for certain listed companies and service sectors. The lack of substantive regulations on M&A activities makes such transactions highly risky. For example, authorities do not apply a consistent definition of what is a foreign invested company. When a foreign investor buys into a local company through an M&A transaction, it is difficult to predict which business lines the acquired company is allowed to maintain as restrictions applied to local and foreign companies are different. For example, foreign ownership cannot exceed 49 percent for listed companies (the limit is 30 percent for companies in the financial sector). A foreign bank is allowed to apply to establish a 100 percent foreign owned affiliate in Vietnam but may only own up to 20 percent of a local commercial bank. Foreign investors are allowed to own either up to 49 percent or 100 percent of a local stock brokerage firm but not any percentage in between 49 and 100.

The government does not explicitly announce which sectors are not subject to the restrictions on foreign investment. Foreign investors have to negotiate on a case by case basis with the government on market access in sectors that are not explicitly opened by a trade or investment agreement.

Between 2014 and 2015 Vietnam plans to "equitize" (e.g. convert the firms to joint stock companies, but rarely fully privatize) more than 400 SOEs. Foreign investors are allowed to buy shares in SOEs in accordance with WTO commitments, and specific requirements by SOE management. Shares are typically offered through auction, though the procedure may become complicated if a foreign investor wants to buy a strategic stake. Many equitizations have been delayed or canceled because regulations do not match normal business practices, and authorities have no clear policy on market valuation.

The procedure to obtain investment certification is complex, requiring investors to get approval from several ministries and/or agencies, depending on ownership (foreign or domestic), size and sector of the investment. Projects deemed to be of "national importance" or with a value of VND 35 trillion (\$1.7 billion) of which state capital is VND 11 trillion (\$500 million) or more must be approved by the National Assembly. However, in practice investors might break such projects into smaller packages to try to avoid these regulations. Key infrastructure projects must be approved by the Prime Minister's Office (see below). Investments in conditional sectors such as broadcasting, mining, telecommunications, banking and finance, ports and airports and education are subject to a more complex licensing process.

Licenses are required to establish a new investment as well as to make significant changes to an ongoing enterprise, such as increasing investment capital, restructuring the form of investment or

investment ratios between foreign and domestic partners, changing the foreign management structure, or adding business activities.

Decentralization of licensing authority to provincial authorities has in some cases streamlined the licensing process and reduced processing times. It has also, however, given rise to considerable regional differences in procedures and interpretations of investment laws and regulations. Insufficient guidelines and unclear regulations sometimes caused local authorities to consult national authorities, creating delays and unpredictability. In addition, the approval process is often much longer than the time frame set by law. Many U.S. firms have invested successfully, though a lack of transparency at times makes participation in investment opportunities too risky for companies that comply with the U.S. Foreign Corrupt Practices Act.

Investment projects that must be approved by the Prime Minister include:

- Projects in airports and seaports; mining, oil and gas; broadcasting and television; casinos; tobacco; higher education; sea transportation; post and delivery services; telecommunication and internet networks; printing and publishing; independent scientific research institutions; and establishment of industrial, export processing, high-tech and economic zones.
- Projects having capital over VND 1.5 trillion (\$71 million) in electricity; mineral processing and metallurgy; railways, roads and domestic waterways; and alcoholic beverages.
- Foreign-invested projects in sea transport, post and telecommunication, publishing, and independent science research units.

Projects of over VND 300 billion (\$14 million) must be appraised by a relevant licensing authority. Criteria may include the requirement for a feasibility study and environmental impact assessment. Any onshore transfer will require an amendment to the investment certificate, which will trigger a new appraisal process.

Vietnamese authorities evaluate investment license applications using a number of criteria, including the legal status and financial capabilities of the investors; the project's compatibility with Vietnam's "Master Plan" for economic and social development; the benefits accruing to the government or to the Communist Party of Vietnam; projected revenue; technology and expertise; efficient use of resources; environmental protection; plans for land use and land clearance compensation; project incentives including tax rates and land, water, and sea surface rental fees.

The government is revising several key regulations such as the Investment Law, the Enterprise Law, regulations on tendering, and a decree on public private partnerships.

The Law on Competition of 2004 aims to create an equitable and non-discriminatory competitive environment, and protect and encourage fair competition. The Law acknowledges the importance of the rights of organizations and individuals to compete freely, and addresses anti-competitive agreements, state monopolies, economic concentration, and unfair competition.

In 2013, the Vietnam Competition Administration (VCA) launched 12 initial investigations related to competition restriction. For instance, VCA completed initial investigations into egg prices, and rates for 3G data service. However, no cases were initiated based on the initial

investigations. VCA investigated and handled 24 unfair competition cases. VCA made decisions in 20 cases, resulting in total fines and administrative fees of VND 650,000,000 (about \$31,000). VCA continued to receive and process M&A cases in some crucial sectors of the economy such as food processing and trading; production, trading and transmission of electricity; and import, export and distribution of steel. In all cases mergers were allowed.

A 2011 Prime Ministerial Directive further defined foreign investment priorities, encouraging projects that use modern and environmentally-friendly technology, and promote the efficient use of natural resources. Vietnam discourages investments that may increase its trade deficit.

Between 2010 and 2013 over \$10 billion in FDI was pledged each year and 70 percent of this capital was disbursed. Manufacturing dominates FDI inflows as investors. Opportunistic FDI in the real estate sector has shrunk. Investments had a higher technological content as seen in assembly facility investments by Intel, Samsung, Nokia and LG. This is in line with Vietnam's policy and efforts to shift FDI to the high tech sector. Nevertheless the footwear and apparel industries witnessed a second investment wave in anticipation of the conclusion of the Trans-Pacific Partnership. Investment in infrastructure such as power generation and water treatment is on the rise as Vietnam needs an estimated \$170 billion to meet growing needs.

Singapore, South Korea and Japan are consistently the top three foreign investors to Vietnam. From 2011 on, the United States has ranked seventh as a source country for FDI. FDI from the United States was less than \$250 million per year and is decreasing. This is in part because U.S. investors come to Vietnam through third countries. In contrast FDI from China excluding Hong Kong is increasing quickly. China ranked fourth in 2013 with \$2.2 billion registered capital.

According to the Vietnam Provincial Competitive Index report (PCI), a survey of FDI companies, though difficulties in the Vietnamese economy continued into 2013, FDI companies performed slightly better than they did in 2012. Foreign companies select Vietnam based on factors affecting production costs. Only 5 percent and 28 percent FDI companies plan to increase investment and expand respectively compared to 37 percent and 68 percent in 2010. Businesses selected Vietnam in spite of misgivings about its infrastructure and services compared to the alternatives.

**Table 1:** The following chart summarizes several well-regarded indices and rankings

Index	Year	Index or Rank	Website address
Transparency International Corruption Perceptions Index	2013	116 of 177	<a href="http://cpi.transparency.org/cpi2013/results/">http://cpi.transparency.org/cpi2013/results/</a>
Heritage Foundation Index of Economic Freedom	2013	147 of 178	<a href="http://www.heritage.org/index/ranking">http://www.heritage.org/index/ranking</a>
World Bank's Doing Business Report "Ease of Doing Business"	2013	99 of 189	<a href="http://doingbusiness.org/rankings">http://doingbusiness.org/rankings</a>
Global Innovation Index	2013	76 of 102	<a href="http://www.globalinnovationindex.org/content.aspx?page=gii-full-">http://www.globalinnovationindex.org/content.aspx?page=gii-full-</a>

			<a href="#">report-2013#pdfopener</a>
World Bank GNI per capita	2012	1,550 USD	<a href="http://data.worldbank.org/indicator/NY.GNP.PCAP.CD">http://data.worldbank.org/indicator/NY.GNP.PCAP.CD</a>

**Table 1B - Scorecards:** The Millennium Challenge Corporation, a U.S. Government entity charged with delivering development grants to countries that have demonstrated a commitment to reform, produced scorecards for countries with a 2012 per capita gross national income (GNI) or \$4,085 or less. A list of countries/economies with MCC scorecards and links to those scorecards is available here: <http://www.mcc.gov/pages/selection/scorecards>. Details on each of the MCC's indicators and a guide to reading the scorecards are available here: <http://www.mcc.gov/documents/reports/reference-2013001142401-fy14-guide-to-the-indicators.pdf>"

<b>Millennium Challenge Corporation</b>	
MCC Government Effectiveness	0.6 (95%)
MCC Rule of Law	0.43 (84%)
MCC Control of Corruption	0.32 (82%)
MCC Fiscal Policy	-3.5 (40%)
MCC Trade Policy	78.2 (92%)
MCC Regulatory Quality	0.07 (60%)
MCC Business Start Up	0.91 (60%)
MCC Land Rights Access	0.76 (89%)
MCC Natural Resource Management	36.5 (43%)
MCC Access to Credit	44 (83%)
MCC Inflation	9.1 (34%)

## 2. Conversion and Transfer Policies

Foreign investors are expected to be self-sufficient for their foreign exchange requirements. The laws stipulate that the government will assist in balancing foreign currency supplies for foreign investors in transportation infrastructure, energy, and waste management when banks are unable to satisfy foreign currency requirements. One particular concern for foreign lenders to power projects is foreign exchange convertibility. The government generally only provides a guarantee of foreign exchange to BOT projects in the thermal power sector of up to 30 percent of revenue after deducting expenses incurred in VND, giving limited foreign reserves as the reason.

The State Bank of Vietnam (SBV) – the central bank – publishes daily average interbank exchange rates, and allows USD/VND transactions to move in a band around this rate. The SBV has maintained a trading band of +/-1 percent since February 2011. No dollar shortages were reported during the year. SBV does not publish foreign reserves but its governor announced on April 28, 2014 that reserves exceeded \$35 billion, up from an estimated \$9 billion in 2011.

The GVN has committed to permitting foreign businesses to remit profits, capital contributions, loans and loan interest and expenses relating to loans, and other legal revenue derived from their investment activities in Vietnam in hard currency. In practice, some U.S. companies reported

difficulty remitting hard currency outside Vietnam. Currency transactions require special licenses that may be difficult to obtain.

According to the 2005 Ordinance on Foreign Exchange Control, currency transactions between residents must be conducted in Vietnamese dong. Exporters must remit all foreign currency earnings into a foreign currency account with an authorized credit institution in Vietnam. Retaining foreign currency earnings overseas requires SBV approval.

### **3. Expropriation and Compensation**

Under the U.S.-Vietnam Bilateral Trade Agreement (BTA), in any future case of expropriation or nationalization of U.S. investor assets, Vietnam must apply international standards of treatment, which include taking such an action for a public purpose, in a non-discriminatory manner, with due process of law, and with prompt, adequate, and effective compensation.

The U.S. Mission is monitoring four cases of expropriation of foreign investment without just compensation. Several foreign investors reported that the provincial or national government pressured them to increase the pace of project development or to raise additional project capital, or risk the loss of their investment license.

### **4. Dispute Settlement**

The hierarchy of Vietnamese People's Courts includes: (1) the Supreme People's Court; (2) Provincial People's Courts; and (3) District People's Courts. The People's Courts operate in five divisions: criminal, civil, administrative, economic, and labor. Parallel to the court systems is the People's Procuracy, which is responsible for supervising judicial operations. The People's Procuracy can protest a judgment or ask for a review of a case. In addition, Vietnam has a system of independent arbitration centers, established under the Commercial Arbitration Ordinance of 2003, that can grant enforceable arbitral awards.

Foreign and domestic arbitral awards are legally enforceable in Vietnam although in practice it can be very hard to enforce awards. Vietnam is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, meaning that foreign arbitral awards rendered by a recognized international arbitration institution should be respected by Vietnamese courts without a review of cases' merits. Only a limited number of foreign awards have been submitted to the Ministry of Justice (MOJ) and local courts for enforcement so far, and almost none have successfully made it through the appeals process to full enforcement.

Vietnamese courts will only consider recognition of civil judgments issued by courts of the countries that have entered into agreements on recognition of judgments with Vietnam or on a reciprocal basis. Vietnam has entered into such agreements. However, with the exception of France, these treaties only cover non-commercial judgments.

Under the 2005 Civil Code, all contracts are "civil contracts" subject to uniform rules. In foreign civil contracts, parties may choose foreign laws as reference for their agreement, provided that

the application of the law does not violate the basic principles of Vietnamese law. In addition, commercial contracts between businesses are regulated by the 2005 Commercial Law.

According to the World Bank, it takes an average of five years to resolve a bankruptcy in Vietnam.

Vietnam's legal system remains underdeveloped and ineffective in settling disputes. Negotiation between the concerned parties is the most common means of dispute resolution.

The law on investment of Vietnam does not allow a foreign investor to refer a dispute to a court in a foreign jurisdiction. Vietnamese judges cannot apply foreign law to a case before them and foreign lawyers cannot participate in proceedings as representatives, advocates, or protectors of the lawful rights and interests of concerned parties. Thus, Vietnamese courts will probably not uphold choice of law contract provisions if such provision is made in breach of the laws of Vietnam.

The Arbitration regime in Vietnam is still developing and awaits the issuance of guidelines and regulations to implement the Arbitration Law.

In 2014, the Ho Chi Minh City Economic Court recognized and enforced an arbitral award in Vietnam against an SOE. This is considered a healthy precedent, though the ruling is on appeal.

The Law on Commercial Arbitration took effect in 2011. In 2013, the Supreme Court published a draft resolution providing additional guidance. The draft has not been officially promulgated yet. At present, there are no foreign arbitration centers in Vietnam though the Arbitration Law permits foreign arbitration centers to establish branches or representative offices.

In January 2014, the Prime Minister named MOJ as the legal representative of the government in dealing with international investment disputes. The Ministry of Finance will solve disputes related to loans and debts of the government and guaranteed by the government.

The Vietnam International Arbitration Center (VIAC) handled 99 cases in 2013. The number of disputes recorded by VIAC has increased by over 500 per cent from 16 cases in 2003.

Under the investment chapter of the BTA, Vietnam gives U.S. investors the right to choose a variety of third-party dispute settlement mechanisms in the event of an investment dispute with the government. Vietnam has not yet acceded to the Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID), but has asked the United States to provide advice in this area. The Ministry of Planning and Investment has submitted a proposal to the government to join the ICSID, but this is still under consideration.

The court system works slowly. International arbitration awards, when enforced, may take years from original judgment to payment.

## **5. Performance Requirements and Investment Incentives**

As part of its WTO accession, Vietnam committed to remove performance requirements that are inconsistent with the TRIMS agreement. The Investment Law specifically prohibits the following requirements: giving priority to the purchase or use of domestic goods or services; compulsory purchase of goods or services from a specific domestic firm; export of goods or services at a fixed percentage; restricting the quantity, value or type of goods or services that may be exported or that may be sourced domestically; fixing import goods at the same quantity and value as goods exported; requirements to achieve certain local content ratios in manufacturing goods; stipulated levels or values on research and development activities; supplying goods or services in a particular location; or mandating the establishment of head offices in a particular location.

Vietnam promotes foreign investment in certain priority sectors or geographical regions, such as mountainous and remote areas of the country with difficult economic and social conditions. The government encourages investment in production of new materials, new energy sources, metallurgy and chemical industries, manufacturing of high-tech products, biotechnology, information technology, mechanical engineering, agricultural, fishery and forestry production, salt production, generation of new plant varieties and animal species, ecology and environmental protection, research and development, knowledge-based services, processing and manufacturing, labor-intensive projects (using 5,000 or more full-time laborers), infrastructure projects, education, training, and health and sports development.

Foreign investors are exempt from import duties on goods imported for their own use and which cannot be procured locally, including all equipment, machinery, vehicles, components and spare parts for machinery and equipment, raw materials, inputs for manufacturing and construction materials that cannot be produced domestically. Remote and mountainous provinces are allowed to provide additional tax breaks and other incentives to prospective investors.

Vietnam has instituted policies to attract investment by its diaspora. Vietnam recognizes dual citizenship for Vietnamese expatriates, who are allowed to choose their status as either domestic or foreign investors. A 2008 law required that Vietnamese citizens who emigrated overseas before 2009 register their intent to retain Vietnamese citizenship with the Vietnamese Embassy in their country of residence by July 1, 2014. In April 2014, the Prime Minister agreed to postpone the deadline for registration for an additional five years, until July 1, 2019. Real estate laws permit limited categories of these investors to buy land use rights to build homes.

U.S. citizens of Vietnamese descent may be treated as Vietnamese nationals unless they have formally renounced their Vietnamese citizenship.

Vietnam has a Law on High Technology to encourage investment in areas such as informatics, biotechnology, new materials and automation. The list of products that are given investment priority is updated from time to time. Companies investing in research and development in items on the list will be entitled to highest tax incentives and may be eligible for funding from the National High Tech Development Program. Companies that develop infrastructure for high tech parks will also benefit from land incentives. To meet high tech criteria companies must be assessed by the Ministry of Science and Technology. The Law came into force in 2009 and a number of companies now receive these incentives.

Decree 72 of 2013 lists licensing requirements and expands the categories of domestic websites subject to those requirements, such as in-house management controls, local server requirements, and the centralization and authentication of user information. If implemented in its current form, it would establish a self-policing model of internet regulation for domestic website companies.

## **6. Right to Private Ownership and Establishment**

The right to non-land private property was restated in Vietnam's revised Constitution in 2013, recognizing "the right of ownership with regard to lawful income, savings, housing, chattel, means of production funds and other possessions in enterprises or other economic organizations." Furthermore, the Constitution 2013 also recognizes private ownership.

## **7. Protection of Property Rights**

Property rights of enterprises and the people in general are recognized in many of Vietnam's laws. However, in effect, ownership rights, especially of land, are not secure. State protection is still ineffective, in some cases enterprises' property rights are easily encroached without proper or effective protection from the state. For example, land use rights of enterprises can still be revoked to serve loosely defined goals such as socio-economic development. Legal claims relating to land disputes between land owners and local authorities and investors account for many outstanding disputes. Foreign investors might be exposed to land disputes through M&A activities when they buy into a local company.

Real estate rights in Vietnam are divided into land ownership, which is collective, and land-use and building rights, which can be held privately. All land in Vietnam is owned collectively and managed by the state and, as such, neither foreigners nor Vietnamese nationals can own it. In addition to land, collective property includes "forests, rivers and lakes, water supplies, wealth lying underground or coming from the sea, the continental shelf and the air, the funds and property invested by the State in enterprises and works in all branches and fields - the economy, culture, society, science, technology, external relations, national defense, security - and all other property determined by law as belonging to the State."

The Land Law of 2003 extended "land-use rights" to foreign investors, allowing title holders to conduct real estate transactions, including mortgages. Foreign investors can lease land for (renewable) periods of 50 years, and up to 70 years in some poor areas of the country. Certain foreigners can own apartments, durable construction, durable trees and planted forests for production purposes in Vietnam, but not the associated land.

Some investors have encountered difficulties amending investment licenses to expand operations onto land adjoining existing facilities. Investors also note that local authorities may intend to increase requirements for land-use rights when current rights must be renewed, particularly in instances when the investment in question competes with Vietnamese companies.

### ***Intellectual Property Rights***

The basis of the legal system related to property rights includes the 2005 Civil Code, the 2005 Intellectual Property Law as amended in 2009, and implementing regulations and decrees. Vietnam has joined the Paris Convention on Industrial Property and the Berne Convention on Copyright and has worked to meet its commitments under these international treaties.

In 2009, Vietnam revised the Intellectual Property (IP) Law and IP-related provisions in the Criminal Code with respect to criminal penalties for certain acts of IPR infringement or piracy. However, enforcement agencies still lack clarity in how to impose criminal penalties on IPR violators and continue to wait for further implementing guidelines. In 2013, the government passed Decree 99 on Administrative Sanctions for Industrial Property Infringement. Decree 99 allows IP enforcement authorities to impose higher fines on infringers, raising the maximum fine to VND 250 million (\$11,900) for individual infringers and VND 500 million (\$23,800) for infringing companies. The Decree also provides new powers and responsibilities to enforcement authorities and includes new measures to improve the government's ability to revoke disputed domain names of infringing companies. Also in 2013, the government passed Decree 131 on Administrative Sanctions on Copyrights. Like Decree 99, Decree 131 increases fines for violators, doubling them from the previous decree in most cases. It also establishes additional remedial measures for victims of copyright violations. Decree 131 empowers the Head of Inspection under most ministries or provincial departments, and specified the authority of the police to sanction administrative violations in the field of copyrights and related rights.

Although Vietnam has made progress in establishing a legal framework for IPR protection, various forms of infringement and piracy of intellectual property are widespread. Vietnam is on the Special 301 Watch List and Zing.com is listed by USTR as a notorious market. Enforcement of administrative orders and court decisions on IP issues remains inconsistent and weak. In addition, the system of administrative enforcement is complex and rights holders have raised concerns regarding inconsistent coordination among enforcement agencies.

Most often, authorities use administrative actions such as warnings and fines to enforce IPR protection because they are less demanding on enforcement time and resources. The United States and other countries have conducted training for enforcement agencies, prosecutors and judges. Some businesses and rights holders have started to assert their rights under the law more forcefully. One positive sign is the growth of Collective Management Organizations, particularly for the music and publishing industries, but the impact of these organizations and their ability to collect royalties on behalf of their members remains weak. In recent years, the government pledged and then partially implemented a plan to rid government offices of pirated software. Vietnamese enforcement bodies have investigated, and in some cases raided and fined, businesses suspected of using pirated software. However, Vietnam still has one of the highest rates of piracy in the world, and enforcement remains uneven, particularly for software, music, and movies. Rights holders continue to seek additional enforcement actions against websites containing infringing digital content. To date, however, very little enforcement action has been taken to punish or prevent digital and internet piracy.

Substantial compensation for IPR violations is only available under the civil remedies section of the IP Law. However, Vietnam's courts are untested in this regard, and concerns remain as to whether rights holders have adequate access to effective civil remedies under the IP Law.

Vietnam has yet to establish specialized IP courts, and knowledge on IP issues within the judiciary remains low. Criminal offenses are prosecuted under the Criminal Code, and criminal proceedings are regulated under the Criminal Procedure Code. In practice, however, criminal prosecutions are rarely used to prosecute IPR violations.

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For additional information about treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at <http://www.wipo.int/directory/en/>.

Local lawyers list: <http://vietnam.usembassy.gov/list-of-attorneys---hanoi-consular-district.html>

**8. Transparency of the Regulatory System**

The Law on the Promulgation of Legal Normative Documents requires all legal documents and agreements to be published online for comments for 60 days, and published in the Official Gazette before implementation. The strong presence of business associations and chambers of commerce, the availability for online commentary on draft laws and regulations, and the biannual Vietnam Business Forum all open up opportunities for direct dialogue between the foreign business community and Vietnamese government officials. However, when issuing more detailed implementing guidelines, government entities regularly issue circulars without public notification or with little advance warning or opportunity for comment by affected parties, arguing that these binding decisions are not legal documents.

Vietnam is a member of the U.N. Conference on Trade and Development's international network of transparent investment procedures: <http://www.eregulations.org>. Foreign and national investors may be able to find information on administrative procedures applicable to investment and income generating operations including the number of steps, name and contact details of the entities and persons in charge of procedures, required documents and conditions, costs, processing time, and legal bases justifying the procedures for the following provinces:

Danang, <http://danang.eregulations.org>  
Ho Chin Minh City, <http://hochiminhcit.eregulations.org>  
Binh Dinh, <http://binhdinh.eregulations.org>  
Hai Duong, <http://haiduong.eregulations.org>  
Phu Yen, <http://phuyen.eregulations.org>  
Vinh Phuc, <http://vinhphuc.eregulations.org>

**9. Efficient Capital Markets and Portfolio Investment**

Vietnam's financial system remains weak and poorly regulated. A lack of transparency and non-compliance with internationally accepted accounting standards among Vietnamese firms are among the many challenges to raising capital domestically.

The banking sector is underdeveloped and is undergoing a restructuring program to address the high level of non-performing loans (NPL), and other structural problems. Most domestic banks are under-capitalized and reportedly hold a large number of NPLs. Under Vietnamese accounting standards and loan classification criteria, the SBV reported the NPL rate at seven percent as of March, 2014. Many international credit rating agencies believe that the NPL rate of Vietnam's banking sector is much higher. State-directed lending by state-owned commercial banks and related-party lending under non-commercial criteria remain sources of concern.

Vietnam's banking sector is concentrated at the top and fragmented at the bottom. The state-owned or majority state-owned banks accounted for 43 percent of the total assets and 35 percent of equity capital in the banking sector as of February 2014. Vietnam's 35 joint stock commercial banks are all smaller than the state-owned commercial banks but gradually gaining market share.

Banks must maintain a minimum chartered capital of VND 3 trillion (about \$143 million).

Vietnam has initiated banking reforms intended to improve the efficiency of the banking system, especially via the equitization of state-owned commercial banks. However, the state remains the controlling shareholder in these banks with not less than 65 percent ownership.

In 2008, the SBV for the first time granted licenses to wholly foreign-owned banks. In January 2014, the ownership limit for a single foreign investor was raised from 15 percent to 20 percent. However, the ceiling for total foreign ownership in a Vietnamese bank remains at 30 percent. The limit can be raised above the 30 percent cap, subject to consideration of the SBV and the Prime Minister's approval on a case by case basis.

Vietnam has two stock exchanges: Ho Chi Minh City Stock Exchange (HOSE) and Hanoi Stock Exchange (HNX). As of April 2014, 342 stocks were listed on the HOSE with total market capitalization of approximately \$14.7 billion, and 376 companies were listed on the HNX with total market capitalization of approximately \$6.5 billion. A trading floor for unlisted public companies (UPCOM) was launched at the Hanoi Securities Center in 2009. As of mid-April, 2014, 176 companies were listed on UPCOM with total market capitalization of approximately \$1.4 billion. Government bonds are traded on the HNX.

## **10. Competition from State-Owned Enterprises**

SOEs' share of the economy has steadily declined over the last decade. In 2005, SOEs accounted for 37 percent of Vietnam's GDP. By 2012, SOEs' share of GDP fell to 32 percent. The SOEs' share of employment also declined from 12 percent to 10 percent. However, the government still attaches a leading role to the state sector and SOEs still dominate in all strategic sectors, such as oil and gas, telecommunications, electricity, mining, and banking.

The 2005 Law on Enterprises requires SOEs to operate under the same legal framework as all other businesses. However, additional SOE reform is needed to put the private sector on a level playing field. The government established the State Capital Investment Corporation (SCIC) to represent state ownership in SOEs, with the responsibility to manage, restructure, and trade state interests through the process of equitization and privatization. The SCIC is also charged with accelerating SOE reform and improving management in companies in its portfolio.

In 2010, Vietnam's state-owned shipbuilder Vinashin went bankrupt due to mismanagement and substantial investment outside its core business. The incident raised concern about the efficiency and continued viability of an economic model driven by a dominant state sector.

Vietnam allows foreign investors to participate in the equitization process (per Decree 59 of 2011), subject to the provisions of other laws that may restrict foreign investors' participation, such as ceilings on capital ownership. SOEs have only recently been authorized to sell shares to strategic investors before an initial public offering. The price for shares sold to strategic investors, however, cannot be lower than the price determined by their ministerial line authority.

In 2012, the government announced that SOE reform is one of the three pillars in its economic restructuring program (the other two are bank restructuring and public investment reform) with a focus on improving the efficiency of the state sector in the economy. However, the government plans to keep wholly or majority state ownership in many large SOEs, particularly those most attractive to investors. The government has set a target to equitize more than 400 SOEs by 2015. However, as only 180 SOEs were restructured during 2011-2013, this target appears ambitious.

Vietnam does not have a sovereign wealth fund.

## **11. Corporate Social Responsibility**

Many multinational companies implement Corporate Social Responsibility (CSR) programs. Awareness of CSR programs appears to be increasing among domestic companies. However, only the largest Vietnamese companies have CSR programs. Corporate disclosure is generally weak. The GVN does not waive environmental or labor standards to attract investment.

## **12. Political Violence**

Significant incidents of violence against foreign investors in Vietnam were unheard of until May 13-14, 2014, when anti-China protestors damaged factories in the outskirts of Ho Chi Minh City and central Vietnam. In the wake of these events authorities at both the national and provincial level have sought to reassure businesses and order has been restored. Proposals to reimburse businesses damaged during the event, either directly or through tax reductions, are under discussion.

## **13. Corruption**

Vietnam's 2005 Anti-Corruption Law requires government officials to declare their assets and sets strict penalties for corrupt practices. Enforcement remains problematic. Vietnam ratified

the UN Convention on Anti-Corruption in 2009, but has not signed the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

The Government has tasked various agencies to deal with corruption, including the Central Steering Committee for Anti-Corruption (led by the Prime Minister), the Government Inspectorate, and line ministries and agencies. The Central Steering Committee for Anti-Corruption was formed in 2007 and initially fell under the Office of the Prime Minister. In 2012 responsibility for oversight was shifted to the Communist Party of Vietnam (CPV) Politburo and eventually transferred to the CPV Central Commission of Internal Affairs in February 2013.

The 2013 Transparency International Corruption Perceptions Index ranked Vietnam 116 out of 177 countries, with an index score of 31 out of 100 (stable from 2012). Corruption is due in large part to a lack of transparency, accountability, and media freedom, as well as low pay for government officials and inadequate systems for holding officials accountable for their actions. Competition among agencies for control over business and investments has created overlapping of jurisdictions and bureaucratic procedures and approvals that in turn create opportunities for corruption.

According to the 2013 PCI report 50 percent of FDI companies had to pay for informal charges, and 40 percent acknowledged that rent-seeking is widespread.

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**14. Bilateral Investment Agreements**

Vietnam has 58 bilateral investment agreements with the following countries and territories: Algeria, Argentina, Armenia, Australia, Austria, Belarus, Belgium and Luxembourg, Bulgaria, Burma, Chile, China, Cuba, Czech Republic, Cambodia, Denmark, Egypt, Finland, France, Germany, Hungary, Iceland, India, Indonesia, Italy, Iran, Japan, Kazakhstan, Korea, Kuwait, Laos, Latvia, Lithuania, Malaysia, Mongolia, Mozambique, Netherlands, North Korea, Oman, Philippines, Poland, Qatar, Romania, Russia, Singapore, Spain, Sri Lanka, Sweden, Switzerland,

Taiwan, Tajikistan, Thailand, Ukraine, United Kingdom, Uruguay, Uzbekistan, United Arab Emirates, and Venezuela.

In 2008, Vietnam and the United States began negotiation of a Bilateral Investment Treaty (BIT). Ongoing negotiations of a Trans-Pacific Partnership trade agreement (TPP), in which the both the United States and Vietnam participate, address investment issues.

## **15. OPIC and Other Investment Insurance Programs**

The Overseas Private Investment Corporation (OPIC) has a bilateral agreement with Vietnam. Vietnam joined the Multilateral Investment Guarantee Agency (MIGA) in 1995.

The estimated annual U.S. dollar value of local currency used by the U.S. Mission in Vietnam is \$22 million. This currency is purchased at the commercial bank rate.

## **16. Labor**

Vietnam's labor force is large (over 53.6 million people), literate (94 percent literacy rate), inexpensive, and young (nearly 66 percent of the population is under 40). The labor pool is expected to increase by 1.5 percent annually through 2015.

Minimum wage varies geographically. In 2014, the minimum wage for workers in private businesses ranges from VND 2.7 million (\$129) to VND 1.9 million (\$90) monthly. Businesses in urban districts of Hanoi, Ho Chi Minh City, and neighboring areas are subject to the higher minimum wage.

Foreign investors can hire and recruit staff directly after exhausting a 15-day period using a state-run employment and recruitment bureau. In practice, many employers omit this step. All personnel must be registered with the government. Vietnam has recently tightened enforcement of foreigner work permit requirements through Decree 102 issued in 2013. Decree 102 introduces significant changes to the regulation of work permits, the procedure for obtaining a work permit, and an employer's use of foreign labor. For some particular circumstances, Decree 102 facilitates the use of foreign workers. For example, while confirming the existing exemptions listed in the new Labor Code, Decree 102 grants exemptions to additional categories of workers, including, but not limited to, the following: teachers at institutions under the management of diplomatic missions or international organizations; holders of a Master's degree or equivalent assigned to work in Vietnam for consultation, teaching, conducting research at universities for less than 30 days; or foreigners working within the framework of an international agreement involving central authorities and political/social organizations at the central level. The goal of Decree 102 is to encourage the use of domestic labor over foreign labor. Decree 102 has eliminated the previous work permit exemption for foreign workers performing services for less than three months. Moreover, employers must evaluate their needs for foreign employees on an annual basis and submit a report to the People's Committee of each province where the company's head office is located. The report must list each position for which the employer proposes hiring a foreign national, provide an explanation as to why a Vietnamese national cannot meet the position's requirements and provide substantial information on the employer's

plans to train and recruit Vietnamese employees to eventually fill the positions. Decree 102 has also confirmed the reduced term of validity of a work permit from three years to two years.

The 2012 revised Labor Code introduced a process of mediation and arbitration for labor disputes and stipulates that strikes can only be held if they relate to collective labor disputes about benefits. The code still requires that at least 50 percent of workers in the workplace must vote for strikes. The new labor code introduced several other revisions, including increasing maternity leave from four months to six months, restricting labor outsourcing services, and reducing the validity of foreign worker permits from three to two years.

Vietnam witnessed 351 strikes in 2013, according to data from the Vietnam General Confederation of Labor (VGCL), much less than the number of the strikes in 2012, when 532 strikes occurred. However, all strikes are unofficial (due to the impracticality of a legal strike under Vietnamese labor law), making data reliability questionable. Approximately 80 percent of strikes took place in foreign invested enterprises (FIEs) and the remaining 20 percent in domestic private companies. The majority of strikes (89 percent) took place in Ho Chi Minh City and surrounding provinces, where most FIEs are located, particularly in the garment, footwear, and furniture sectors. The government rarely takes action against “illegal” strikers.

The Trade Union code was also revised in 2012. In principle employers are not obliged to establish trade unions at their workplace, but if a trade union is established the employer must provide a workspace and amenities to conduct trade union activities. In order to be legally recognized, all labor unions must register with the VGCL, a state-run organization under the Communist Party-affiliated Fatherland Front that labor experts note has weak capacity at the provincial and enterprise level. Employers have to contribute two percent of their payroll to support trade union budgets regardless of whether trade unions exist at their workplace.

Vietnam has been a member of the International Labor Organization (ILO) since 1992, and has ratified five core labor conventions (Conventions 100 and 111 on discrimination, Conventions 138 and 182 on child labor, and Convention 29 on forced labor). Vietnam has not ratified Convention 105 dealing with forced labor as a means of political coercion and discrimination or Conventions 87 and 98 on freedom of association and collective bargaining. Under the 1998 Declaration on Fundamental Principles and Rights at Work, however, all ILO members, including Vietnam, have pledged to respect and promote core ILO labor standards, including those regarding association, the right to organize and collective bargaining. A number of technical assistance projects in the field of labor sponsored by foreign donors, including the United States, are currently underway in Vietnam.

## **17. Foreign Trade Zones/Free Ports**

Vietnam has about 270 industrial zones (IZs) and export processing zones (EPZs). Projects in IPs and EPZs often enjoy investment incentives by sectors and geographical areas. Enterprises pay no duties when importing raw materials if the end products are exported. Vietnam committed to eliminating prohibited export subsidies on its accession to the WTO.

Many foreign investors note that it is easier to implement projects in industrial zones because they do not have to be involved in site clearance and infrastructure construction.

Customs warehouse keepers can provide transportation services and act as distributors for the goods deposited. Additional services relating to customs declaration, appraisal, insurance, reprocessing, or packaging require the approval of the provincial customs office. In practice the time involved for clearance and delivery can be lengthy and unpredictable.

Most goods pending import or export can be deposited in bonded warehouses under the supervision of the provincial customs office. Exceptions include goods prohibited from import or export, Vietnamese-made goods with fraudulent trademarks or labels, goods of unknown origin, and goods dangerous or harmful to the public or environment. The inbound warehouse leasing contract must be registered with the customs bond unit at least 24 hours prior to the arrival of goods at the port. Documents required are a notarized copy of authorization of the holder to receive the goods, a notarized copy of the warehouse lease contract, the bill of lading, a certificate of origin, a packing list, and customs declaration forms. Owners of the goods pay import or export tax when the goods are removed from the bonded warehouse.

## 18. Foreign Direct Investment and Foreign Portfolio Investment Statistics

**Table 2: Key Macroeconomic data, U.S. FDI in Vietnam**

	Host Country Statistical source*	USG or international statistical source	USG or international Source of Data: BEA; IMF; Eurostat; UNCTAD, Other		
<b>Economic Data</b>	Year	Amount	Year	Amount	
Host Country Gross Domestic Product (GDP) ( <i>Millions U.S. Dollars</i> )	2013	170,000	2012	155,800	<a href="http://www.worldbank.org/en/country">http://www.worldbank.org/en/country</a>
<b>Foreign Direct Investment</b>	Host Country Statistical source*	USG or international statistical source	USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other		

U.S. FDI in Vietnam ( <i>Millions U.S. Dollars, stock positions</i> )	2013	10,619	2012	1,064	(BEA)
Vietnam's FDI in the United States ( <i>Millions U.S. Dollars, stock positions</i> )	2013	N/A	2012	N/A	
Total inbound stock of FDI as % Vietnam GDP	2013	6.76%	2012	0.7%	BEA and World Bank

\* General Statistic Office of Vietnam

Foreign investment capital in Vietnam is pledged not disbursed amount.

**Table 3: Sources and Destination of FDI**

From Top Five Sources/To Top Five Destinations (US Dollars, Millions)					
Inward Direct Investment			Outward Direct Investment (Data unavailable)		
Total Inward	21,628	100%			
Japan	5,747	26.6%			
Singapore	4,376	20.2%			
South Korea	4,293	19.9%			
China	2,304	10.7%			
Russia	1,021	4.7%			

"0" reflects amounts rounded to +/- USD 500,000.

Source: Vietnam Ministry of Planning and Investment <http://fia.mpi.gov.vn>

**Table 4: Sources of Portfolio Investment**

Data unavailable from both the IMF and Vietnamese government.

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